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**ATTORNEY FOR RICK'S AUTO BODY, INC.**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MID-CENTURY INSURANCE  
COMPANY, a member of company of  
FARMERS INSURANCE GROUP OF  
COMPANIES,

Plaintiffs,

vs.

RICK'S AUTO BODY, INC., and  
AARON HALL, Individually and as  
Personal Representative of the Estate of  
Bruce Hall,

Defendants.

RICK'S AUTO BODY, INC.,

Plaintiff,

vs.

MID-CENTURY INSURANCE  
COMPANY and TRUCK INSURANCE  
EXCHANGE, member companies of  
FARMERS INSURANCE GROUP OF  
COMPANIES,

Defendants.

Cause No. CV17-63-M-DLC

**DEFENDANT RICK'S AUTO  
BODY, INC. ANSWER TO  
COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND COUNTER-CLAIM**

COMES NOW, one of the Defendants, Rick's Auto Body, Inc., by and through  
counsel, Douglas D. Harris, of Harris & Irwin Law Offices, PLLP, and for its answer  
to the Complaint for Declaratory Judgment, answers, admits, denies, alleges and

counter-claims as follows:

**PARTIES**

1. Rick’s Auto Body, Inc. (hereinafter “Rick’s”) admits the allegations of ¶ 1.

2. Rick’s admits the allegations of ¶ 2.

3. Rick’s admits the allegations of ¶ 3 and further alleges that Bruce Hall was a citizen of the County of Missoula, State of Montana, prior to his death.

**JURISDICTION**

4. Rick’s denies the allegations of ¶ 4 insofar as the Court, under Declaratory Judgment Act, 28 USCA § 2201(a), should exercise its discretion to abstain from subject matter jurisdiction. Therefore, Defendant Rick’s files its companion Motion for Order to Stay, or Dismiss without Prejudice with Brief, concurrently with this *Answer and Counter-Claim*.

5. Rick’s admits the allegations contained in ¶ 5.

**VENUE**

6. Rick’s admits the allegations contained in ¶ 6.

**GENERAL ALLEGATIONS**

**The Policy**

7. Rick’s admits the allegations contained in ¶ 7.

8. Rick’s admits the allegations contained in ¶ 8 in part that the subject of this action is the parties’ rights and obligations under the policies, including whether there is a duty to defend and indemnify the civil action described in the Complaint for Declaratory Judgment.

9. Rick’s admits the allegations contained in ¶ 9.

**The Underlying Action**

10. Rick’s admits the allegations contained in ¶ 10.

11. Rick’s admits the allegations contained in ¶ 11 that the Complaint alleges a claim against Rick’s, but denies that the claim is limited to a “personal

injury claim” and furthermore, Rick’s is without knowledge upon which to form a belief as to whether the claim is wholly a personal injury claim, bodily injury claim, or separate tort of infliction of emotional distress.

12. Rick’s admits the allegations contained in ¶ 12.

13. Rick’s admits the allegations contained in ¶ 13.

14. Rick’s admits the allegations contained in ¶ 14.

15. Rick’s admits the allegations contained in ¶ 15.

16. Rick’s admits the allegations contained in ¶ 16.

### **Coverage**

17. Rick’s denies the allegations contained in ¶ 17.

18. Rick’s admits the allegations contained in ¶ 18.

### **AFFIRMATIVE DEFENSE**

1. Factual development and adjudicated law of the case in the underlying action are necessary before this Court can enter a full and complete judgment on all coverage issues.

### **COUNTER-CLAIM**

By way of further answer to the *Complaint for Declaratory Judgment* and as a counter-claim for Rick’s Auto Body, Inc. costs of defense and indemnity, Rick’s complains:

1. Rick’s repleads its answer and affirmative defense as though fully set forth herein.

2. Mid-Continent and Truck Insurance Exchange owe Rick’s the costs of defense and indemnity as covered insured under two policies: the primary liability policy and the commercial umbrella policy, for which Rick’s has paid all premiums for risks assumed and covered under the policies of insurance and Montana Supreme Court law of decision on permissible claims the survivor of a workman’s death may bring in the survivor’s own name.

WHEREFORE, Rick's Auto Body, Inc. prays for judgment as follows:

1. That the *Complaint for Declaratory Judgment* be dismissed and that Plaintiff take nothing thereby;
2. That upon separate motion, this action be stayed or dismissed, in the Court's discretion; or
3. For this Court's declaratory judgment that the policy of insurance provides coverage in the underlying action for costs of defense and indemnity; and
4. For Rick's Auto Body, Inc. costs and attorneys' fees incurred herein; and
5. For such other and further relief as the Court deems just, proper and equitable in the premises.

DATED this 25<sup>th</sup> day of July, 2017.

HARRIS & IRWIN LAW OFFICES, PLLP

By: /s/ Douglas D. Harris  
**Douglas D. Harris**

*ATTORNEY FOR RICK'S AUTO BODY, INC.*

**CERTIFICATE OF SERVICE**  
**L.R. 5.2(b)**

I hereby certify that on this 25<sup>th</sup> day of July, 2017, a copy of the foregoing document was served on the following persons by the following means:

1, 2 CM/ECF  
       Hand Delivery  
       Mail  
       Overnight Delivery Service  
       Fax  
       E-Mail

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/s/ Douglas D. Harris